

ORDINANCE NO. \_\_\_\_

AN ORDINANCE AMENDING CHAPTER 1, "GENERAL PROVISIONS", SECTION 29, "COLLEGE STATION CEMETERY RULES AND REGULATIONS", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY ADDING SUBSECTION O, PROVIDING FOR AN APPLICATION PROCESS WHEREBY A CHARITABLE NON-PROFIT CORPORATION MAY REQUEST APPROVAL TO ESTABLISH A CEMETERY, CREMATORY OR MAUSOLEUM WITHIN THE BOUNDARIES OF THE CITY OF COLLEGE STATION, AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND AN PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1: That Chapter 1, "General Provisions", Section 29, "College Station Cemetery Rules and Regulations", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.
- PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2001.

APPROVED:

\_\_\_\_\_  
LYNN McILHANEY, Mayor

ATTEST:

\_\_\_\_\_  
Connie Hooks, City Secretary

APPROVED:

\_\_\_\_\_  
City Attorney

**EXHIBIT "A"**

That Chapter 1, "General Provisions", Section 29, "College Station Cemetery Rules and Regulations", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by adding subsection O, as set out hereafter to read as follows:

**O. REQUEST TO ESTABLISH CEMETERIES, CREMATORIES OR MAUSOLEUMS  
WITHIN THE CITY LIMITS**

1. Cemeteries, crematories and mausoleums, because of their similarity to park use shall be treated as a park use and shall be a permitted use in any zoning district within the City of College Station subject to approval by the College Station City Council.
2. An application to establish a cemetery, crematory or mausoleum may be made by any non-profit corporation. This application shall include the following:
  - a) Name, address and telephone number of the applicant
  - b) Name, address and telephone number of the applicant's authorized agent, if any,
  - c) Property location (street address) and legal description
  - d) A sworn affidavit, executed by the applicant or applicant's authorized agent, stating that:
    - 1) The proposed establishment or use of the property as a cemetery, crematory or mausoleum will be in compliance with all applicable codes and ordinances of the City of College Station.
    - 2) The proposed establishment or use of the property as a cemetery, crematory or mausoleum will be in accordance with all applicable state and local laws and regulations, including but not limited to Chapters 711 and 712 of the Texas Health and Safety Code.
    - 3) The proposed establishment or use of the property as a cemetery, crematory or mausoleum will not adversely affect the public health, safety or welfare.
    - 4) Above ground crypts shall be floodproofed and restrained in such a manner as to resist flotation and lateral movement.
    - 5) Upright headstones shall be restrained in such a manner to resist lateral movement produced by floodwaters.
    - 6) Below ground vaults shall be secured in such a manner to prevent flotation from ground water pressure. Vault lids shall be attached in such a manner to prevent separation.
3. In addition, the application shall include a site plan showing the following:
  - a) Site layout
  - b) Internal circulation

- c) Site access (ingress and egress)
  - d) Internment areas
  - e) Any planned improvements, including but not limited to, structures, landscaping, irrigation, walkways, parking areas, maintenance shops, chapels etc.
4. Any applicant, as a condition of granting this application, shall protect, indemnify and hold harmless the City of College Station, its officers and employees against all claims, suits, causes of action in any way arising out of the granting of this application, directly or indirectly. This provision is not intended to create and shall not create liability for the benefit of third parties, but is solely for the benefit of the City of College Station, its officers and employees.

Upon commencement of any suit or proceeding at law or in equity against the City of College Station, its officers and employees related to the application granted herein, the City shall give the applicant reasonable notice of such suit or proceeding, whereupon the applicant shall provide a defense to such suit or suits, including any and all appellate proceedings brought in connection therewith, and pay any judgment or costs that may be rendered against the City of College Station, its officers and employees by reason of said suit.

Upon failure of applicant to comply with the defense of the suit, after reasonable notice to applicant by the City, the City of College Station shall have the right to defend the same and in addition to being reimbursed for any such judgment that may be rendered against the City of College Station, its officers and employees, together with all court costs incurred therein, the applicant shall reimburse the City for attorney's fees, including any attorney employed by the City of College Station in such case or cases, as well as all expenses, fees, or costs incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised or fully adjudicated against the City, its officers and employees.

In the event the City of College Station is compelled to undertake the defense of any suit by reason of the applicant's failure to perform as provided herein, the City of College Station shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the governing body shall deem is in the best interest of the City, including the cancellation of applicant's approved application for cemetery, crematory or mausoleum, without prior approval or consent of the applicant. Such right of cancellation shall terminate upon the first interment at a cemetery, crematory or mausoleum where an application had been granted pursuant to this ordinance.

In defense of any litigation, the City of College Station shall require the applicant to present on the City's, its officers and employees' behalf, and in the City's name, any and all defenses that are available, including but not limited to sovereign and qualified immunity.

5. In order for any application to be approved, the City Council of the City of College Station shall find that the use of the proposed property does not adversely affect public health, safety and welfare and the property is located in an area with limited urban growth potential.
6. No application shall be accepted after December 1, 2001.